

## RULEMAKING NOTICE FORM

Notice Number

**2015-98**

Rule Number

**He-W 656.01 &  
He-W 856.01**

<p>1. Agency Name &amp; Address:</p> <p><b>Department of Health and Human Services Division of Family Assistance 129 Pleasant St., Brown Bldg. Concord, NH 03301</b></p>	<p>2. RSA Authority: <b>RSA 167:3-c,I</b></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <b>X</b></p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <b>X</b></p>
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5. Short Title: **Expiring Rule Related to Resources Basic Principles for Financial Assistance and New Rule for Resources Basic Principles for Medical Assistance**

6. (a) Summary of what the rule says and of any proposed amendments:

**The New Hampshire Department of Health and Human Services, (Department) is proposing to readopt with amendment He-W 656.01, as this rule is scheduled to expire October 1, 2015, but is subject to extension pursuant to RSA 541-A:14-a. He-W 656.01 describes the evaluation and treatment of resources when determining eligibility for financial assistance. The proposed change to He-W 656.01 removes paragraphs (b), (c), and (d) relating to community spouse resource rules, because community spouse resource rules are only used in determinations of eligibility for medical assistance, and all rules regarding medical assistance are incorporated into He-W 800.**

**The Department is proposing to adopt He-W 856.01, which describes the evaluation and treatment of resources when determining eligibility for medical assistance, as a new rule in He-W 800, Eligibility for Medical Assistance, as the rule only applies to medical assistance.**

**The Department policy remains unchanged.**

6. (b) Brief description of the groups affected:

**The proposed amendments and adoption of a new rule should have no effect on any particular group. The amendments and new rule are simply a reorganization of the current rule and not a change to policy.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<u>Rule</u>	<u>Federal Reg./RSA</u>
He-W 656.01	RSA 167:4, RSA 167:81
He-W 856.01	RSA 167:4, 42 CFR 435.725(c)(2), 42 CFR 435.832(c)(2), 42 CFR 435.840, 42 USC 1396a(q), Section 1924 (c)(1) & (d)-(g) of the SSA[42 UCS 1396r-5(c)(1) & (d)-(g)]

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	<b>Catherine Bernhard</b>	Title:	<b>Rules Coordinator</b>
Address:	<b>Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant Street, Brown Bldg Concord, NH 03301</b>	Phone #:	<b>271-9374</b>
		Fax#:	<b>271-5590</b>
		E-mail:	<a href="mailto:catherine.bernhard@dhhs.state.nh.us">catherine.bernhard@dhhs.state.nh.us</a>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

**The proposed rules may be viewed and downloaded at:**

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, July 30, 2015**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, July 23, 2015 at 3:30 PM**

Place: [\*\*DHHS, Brown Bldg, Room 232, 129 Pleasant St., Concord, NH 03301\*\*](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **15:087**, dated **5/13/2015**

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

**3. Costs and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rule does not create a new program or responsibility, expand or modify an existing program or responsibility, or mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.**

**Readopt with amendments He-W 656.01, effective 10-1-07 (Document #8993), so that He-W 656.01 reads as follows:**

He-W 656.01 Resources - Basic Principles.

~~—(a) Except where otherwise provided or specifically prohibited by federal law, resources shall be evaluated and treated the same for the adult categories of financial assistance and all categories of medical assistance as in the NHEP/UP/FAPFANF categoryies of financial assistance.~~

~~—(b) The department's state spousal resource standard shall be the minimum standard required by 42 USC 1396r-5(f) and (g).~~

~~—(c) As required by 42 USC 1396r-5(e)(2)(C), there shall be substituted for the community spouse resource allowance pursuant to 42 USC 1396r-5(f)(2) an amount adequate to raise the community spouse's income up to the maximum maintenance allowance if all of the following conditions are met:~~

~~(1) The institutionalized spouse has allocated the maximum amount of income allowed pursuant to He-W 654.21(h); and~~

~~(2) An administrative appeals officer determines that the community spouse resource allowance, in relation to the amount of income generated by such an allowance, is inadequate to raise the community spouse's income to the maximum maintenance allowance specified in 42 USC 1396r-5(d).~~

~~—(d) For purposes of evaluating and treating resources, individuals applying for or receiving home and community-based care shall not be considered institutionalized individuals except when evaluating asset transfers.~~

**Adopt He-W 856 to read as follows:**

PART He-W 856 RESOURCES

He-W 856.01 Resources - Basic Principles.

(a) Except where otherwise provided or specifically prohibited by federal law, resources shall be evaluated and treated the same for all categories of medical assistance that use a resource test in the eligibility determination process.

(b) The department's state spousal resource standard shall be the minimum standard required by 42 USC 1396r-5(f) and (g).

(c) As required by 42 USC 1396r-5(e)(2)(C), there shall be substituted for the community spouse resource allowance, pursuant to 42 USC 1396r-5(f)(2), an amount adequate to raise the community spouse's income up to the maximum maintenance allowance if all of the following conditions are met:

(1) The institutionalized spouse has allocated the maximum amount of income allowed pursuant to He-W 654.21(h); and

(2) An administrative appeals officer determines that the community spouse resource allowance, in relation to the amount of income generated by such an allowance, is inadequate

to raise the community spouse's income to the maximum maintenance allowance specified in 42 USC 1396r-5(d).

(d) For purposes of evaluating and treating resources, individuals applying for or receiving home and community based care shall not be considered institutionalized individuals except when evaluating asset transfers.

#### APPENDIX

<b>Rule</b>	<b>State Statute and Federal Regulation Implemented by the Rule</b>
He-W 656.01	RSA 167:4, RSA 167:81
He-W 856.01	RSA 167:4, 42 CFR 435.725(c)(2), 42 CFR 435.832(c)(2), 42 CFR 435.840, 42 USC 1396a(q), Section 1924(c)(1) & (d)-(g) of the SSA [42 USC 1396r-5(c)(1) & (d)-(g)]